IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2011 of 1987
with
SPECIAL CIVIL APPLICATION No 5972 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

K.B. MODI
Versus
STATE OF GUJARAT

Appearance:
1. Special Civil Application No. 2011 of 1987
MR AK CLERK for Petitioner No. 1
RULE SERVED for Respondent No. 1-3
MR PM THAKKAR for Respondent No. 4
2. Special Civil Application No. 5972 of 1991
MR AK CLERK for Petitioner No. 1
MR NC THAKKER, A.G.P., for Respondent No. 1

CORAM : MR.JUSTICE D.A.MEHTA

Date of decision: 13/07/2001

ORAL COMMON JUDGEMENT

The petitioner was appointed as an Investigator on 21st December, 1959 in the erstwhile State of Bombay. Thereafter, the Gujarat Public Service Commission selected him for the post of Government Labour Officer in

the year 1966 and he was accordingly appointed in the office of the Commissioner of Labour on 21st June, 1966. The petitioner was promoted on 11th December, 1974 as Assistant Commissioner of Labour and posted at Baroda. He was working in the same post since that date till the day of his retirement.

2. The petitioner was permitted to cross the Efficiency Bar by the memo dated 30th September, 1982. It is further stated that the petitioner was given additional charge of two posts of Assistant Commissioner of Labour in addition to his own duty and the petitioner held such charge from 1st July, 1981 to 25th May, 1982 and received charge allowance for the said period.

3. For the Calender year 1979, the petitioner was communicated adverse remarks (for the first time in his career) by letter dated 18th May, 1983. The petitioner represented against the said adverse remarks on 27th June, 1983 and by letter dated 15th February, 1985, the said adverse remarks for the year 1979 were expunged.

4. The second adverse remarks for the period from 1st April, 1982 to 31st March, 1983 were communicated to the petitioner on 18th May, 1983. The petitioner represented against the same by letter dated 27th June, 1983 and these adverse remarks were also expunged by letter dated 7th June, 1985.

5. The petitioner was posted as Assistant Commissioner of Labour at Surat between June, 1978 to January, 1980 and for the said period an inquiry had instituted against him. The petitioner filed an explanation dated 16th January, 1981 but a charge-sheet was submitted to him on 4th October, 1982. However, in this inquiry, the petitioner was completely exonerated by letter dated 18th May, 1985. It appears that during the pendency of the inquiry i.e.between 4th October, 1982 to 18th May, 1985, five posts of Deputy Commissioner of Labour fell vacant and were filled in by promotion by Government Notification dated 26th September, 1983. It is the say of the petitioner that the persons promoted vide aforesaid Notification dated 26th September, 1983 were junior to the petitioner and that the petitioner was entitled to be promoted on the said day i.e.26th September, 1983. This has not been denied by the Respondents.

6. On behalf of the petitioner Mr.A.K. Clerk has submitted that as per Government Resolution dated 23rd September, 1981 when a departmental inquiry is pending

against a person, the Departmental Promotion Committee is required to consider the case of such a person and the decision is required to be kept in a sealed cover. It is further submitted that the said Resolution also provides that whether an employee against whom such inquiry is pending is exonerated, the sealed cover is required to be opened and the case of such an employee requires to be reviewed for the purpose of promotion to the post to which a person junior to such an employee was promoted during the pendency of inquiry. It was, therefore, contended that the petitioner's case ought to have been reviewed by the authorities on or after 18th May, 1985 when the petitioner was exonerated in the departmental inquiry and he ought to have granted promotion with effect from 26th September, 1983 i.e. the date on which his juniors had been promoted.

7. Apparently, this exercise of review was not undertaken after 18th May, 1985. The petitioner made a representation on 29th October, 1985 and in response thereto a communication dated 23rd November, 1985 was received to the effect that the case of the petitioner was under consideration. Thereafter, on 5th March, 1986 and 1st June, 1986, the petitioner forwarded two reminders and followed up the same by personal visit on 28th August, 1986. However, the petitioner has made a grievance that the authorities, though requested by the petitioner personally from time to time, did not act in terms of the Government Resolution dated 23rd September, 1981 i.e. the sealed cover was not opened even though the petitioner was exonerated in the departmental inquiry and the case of the petitioner was not taken up for review.

8. The petitioner has in the aforesaid factual matrix prayed for following reliefs :

"(a) directing the respondent-Government to open the sealed cover in the case of the petitioner and to review the petitioner's case for promotion to the post of Dy. Commissioner of Labour bearing in mind the relevant considerations and in accordance with law from the date from which his junior were promoted to the said post;

(b) directing the respondent authorities to promote the

petitioner to the post of Dy. Commissioner of Labour with effect from the date on which his juniors were promoted to the said post and to grant to the petitioner all consequential benefits like seniority, difference in salary etc. on that basis.

(c) granting such other and further reliefs and passing such other and further orders as may be necessary in the facts and circumstances of the case. "

9. Mr.Clerk in support of his case has relied upon the following two decisions :

(1) Dr.D.N. CHATTERJI Vs. STATE OF GUJARAT AND ANR, 1980(2) GLR 108
(2) GURDIAL SINGH FIJJI Vs. STATE OF PUNJAB AND ORS., AIR 1979 SC 1622

10. Though the respondent Nos.1,2 and 3 have been duly served, there is no appearance and the Ld.A.G.P. Mr.NC Thakker pointed out that he had no instructions to appear in the matter. Though he was appearing in connected matter of the same petitioner i.e. in Special Civil Application No.5972 of 1991.

11. In so far as Respondent No.4 is concerned, Mr.P.M. Thakker appeared and stated that he had nothing to submit in view of the fact that Respondent No.4 had already been promoted.

12. The short point which falls for our consideration is what is the effect of the adverse remarks which were communicated to the petitioner; and secondly the effect of pendency of departmental inquiry at the point of time when persons junior to the petitioner were considered for promotion. As already noted, five persons junior to the petitioner were promoted for the post of Deputy Commissioner of Labour vide Government Notification dated 26th September 1983. The first adverse remarks for the year 1979 were communicated to the petitioner only on 18th May, 1983 and expunged on 15th February, 1985. The second adverse remarks were also communicated to the petitioner only on 18th May, 1983 and expunged on 7th June, 1985. Similarly, the inquiry was pending against the petitioner from 4th October, 1982 and the petitioner

stood exonerated on 18th May, 1985. Thus, on the day when five juniors to the petitioner were promoted, the petitioner's representations against the adverse remarks for the year 1979 and for the year 1982-83 were pending. Similarly, the departmental inquiry proceedings were also pending against the petitioner on the said day. However, on 15th February, 1985, the first adverse remarks were expunged, on 18th May, 1985 the departmental inquiry was concluded by exonerating the petitioner and on 7th June, 1985, the second adverse remarks stood expunged.

13. The net effect is thus, that latest by 7th June, 1985 all adverse communications and proceedings against the petitioner stood concluded in his favour. The legal effect in such circumstances would be that it would be deemed that the adverse remarks had never been made i.e. they were non-existent. Infact, it could be said that the said adverse remarks stood obliterated for all intents and purposes. Similar would be the position in relation to the departmental inquiry proceedings i.e. the position would be that the petitioner was not charge-sheeted or that the charges levelled against him were not proved exonerating the petitioner absolutely.

14. In view of these position in law, the respondent-authorities would have no occasion to take into consideration either of the adverse remarks or the departmental inquiry proceedings into consideration for the purpose of ascertaining whether the petitioner was entitled to be considered for promotion or not. The petitioner would thus be entitled to be considered for promotion as on 26th September 1983 i.e. day on which five persons junior to him were considered for promotion.

15. The respondent-government is, therefore, directed to open the sealed cover in case of the petitioner and undertake the exercise of considering the petitioner for promotion to the post of Deputy Commissioner of Labour bearing in mind what is stated hereinbefore and in accordance with the settled legal position. The respondent Government is further directed to consider the case of the petitioner for promotion from the date on which his juniors were promoted to the aforesaid post i.e. 26/9/1983.

16. During pendency of the petition, the Court was informed that the petitioner had retired from service w.e.f. 30th April, 1993. In view of this position, the petitioner is entitled to the deemed date of promotion and to be considered for promotion as aforestated and would be entitled to all consequential benefits in the

form of monetary benefits.

17. By way of interim relief on 2nd December, 1988, the Court had ordered that the promotion of the persons juniors to the petitioner to the post in question shall be subject to the result of the petition. The respondent shall keep this direction in mind while determining the case of the petitioner.

Petition allowed. Rule is made absolute accordingly with no order as to costs.

SPECIAL CIVIL APPLICATION No 5972 of 1991

The petitioner has challenged action of the respondent-authorities in not promoting the petitioner to the post of Deputy Commissioner of Labour.

2. The case of the petitioner has already been dealt with by us today in our judgement in Special Civil Application No.2011 of 1987. However, in this petition, the petitioner has further challenged the promotion of two persons junior to the petitioner being promoted to the post of Deputy Commissioner of Labour on a temporary basis by Notification dated 31st July, 1991.

3. Mr.NC Thakker for the respondents has submitted that the petitioner should not be granted any relief which would operate adversely against the persons who have already been promoted and who have not been joined as party in the present proceedings.

4. This petition is in a sense consequential petition. As the petitioner has already succeeded in Special Civil Application No.2011 of 1987, this petition shall have to be allowed on the same terms and conditions as a natural corollary.

5. We may make it clear that if in case petitioner's claim is favorably considered for promotion w.e.f. 26/9/1983 no grievance would survive in so far as the present petition is concerned as the petitioner would be deemed to have taken precedence even over the two junior persons whose promotion has been challenged in this petition. The petitioner has sought the same relief as in Special Civil Application No.2011 of 1987 on the presumption that his claim shall not be accepted therein. In the unlikely event of such a situation arising, the Respondents shall undertake the same exercise for the purposes of ascertaining the eligibility for promotion as

on 31st July, 1991 and all the directions given in Special Civil Application No.2011 of 1987 shall apply in this petition as well.

Rule is made absolute accordingly. No order as to costs.

(D.A.Mehta, J)

'Bhavesh'